

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER, State Bar No. 101336
Supervising Deputy Attorney General
4 110 West "A" Street, Suite 1100
San Diego, CA 92101
5 P.O. Box 85266
San Diego, CA 92186-5266
6 Telephone: (619) 645-3037
Facsimile: (619) 645-2061
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2013-224**

13 **KATHLEEN KIM BANES-LECLAIR**
14 **AKA KATHLEEN KIM BANESLE**
15 **9006 Haveteur Way**
16 **San Diego, CA 92100**

A C C U S A T I O N

17 **Registered Nurse License No. 535791**

18 **Respondent.**

19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
23 Consumer Affairs.

24 2. On or about August 21, 1997, the Board of Registered Nursing issued Registered
25 Nurse License Number 535791 to Kathleen Kim Banes-Leclair (Respondent). Respondent is also
26 known as Kathleen Kim Banesle and Kathleen Kim Banesleclair. The Registered Nurse License
27 was in full force and effect at all times relevant to the charges brought herein and will expire on
28 July 31, 2013, unless renewed.

///

///

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

6. Section 2811(b) states:

Each such license not renewed in accordance with this section shall expire but may within a period of eight years thereafter be reinstated upon payment of the biennial renewal fee and penalty fee required by this chapter and upon submission of such proof of the applicant's qualifications as may be required by the board, except that during such eight-year period no examination shall be required as a condition for the reinstatement of any such expired license which has lapsed solely by reason of non-payment of the renewal fee. After the expiration of such eight-year period the board may require as a condition of reinstatement that the applicant pass such examination as it deems necessary to determine his present fitness to resume the practice of professional nursing.

STATUTORY PROVISIONS

7. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

///

///

///

1 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
2 revoke a license on the ground that the licensee has been convicted of a crime substantially
3 related to the qualifications, functions, or duties of the business or profession for which the
4 license was issued.

5 9. Section 493 of the Code states:

6 Notwithstanding any other provision of law, in a proceeding conducted by a
7 board within the department pursuant to law to deny an application for a license or
8 to suspend or revoke a license or otherwise take disciplinary action against a person
9 who holds a license, upon the ground that the applicant or the licensee has been
10 convicted of a crime substantially related to the qualifications, functions, and duties
11 of the licensee in question, the record of conviction of the crime shall be conclusive
12 evidence of the fact that the conviction occurred, but only of that fact, and the board
13 may inquire into the circumstances surrounding the commission of the crime in
14 order to fix the degree of discipline or to determine if the conviction is substantially
15 related to the qualifications, functions, and duties of the licensee in question.

16 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
17 'registration.'

18 10. Section 2761 of the Code states:

19 The board may take disciplinary action against a certified or licensed nurse
20 or deny an application for a certificate or license for any of the following:

21 (a) Unprofessional conduct, which includes, but is not limited to, the
22 following:

23 ...

24 (e) Making or giving any false statement or information in connection with
25 the application for issuance of a certificate or license.

26 (f) Conviction of a felony or of any offense substantially related to the
27 qualifications, functions, and duties of a registered nurse, in which event the record
28 of the conviction shall be conclusive evidence thereof.

29

30 11. Section 2762 of the Code states:

31 In addition to other acts constituting unprofessional conduct within the
32 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a
33 person licensed under this chapter to do any of the following:

34

35 ///

36 ///

1 (b) Use any controlled substance as defined in Division 10 (commencing
2 with Section 11000) of the Health and Safety Code, or any dangerous drug or
3 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or
4 in a manner dangerous or injurious to himself or herself, any other person, or the
5 public or to the extent that such use impairs his or her ability to conduct with safety
6 to the public the practice authorized by his or her license.

7 (c) Be convicted of a criminal offense involving the prescription,
8 consumption, or self-administration of any of the substances described in
9 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
10 record pertaining to, the substances described in subdivision (a) of this section, in
11 which event the record of the conviction is conclusive evidence thereof.

12 12. Code section 2765 states:

13 A plea or verdict of guilty or a conviction following a plea of nolo
14 contendere made to a charge substantially related to the qualifications, functions and
15 duties of a registered nurse is deemed to be a conviction within the meaning of this
16 article. The board may order the license or certificate suspended or revoked, or may
17 decline to issue a license or certificate, when the time for appeal has elapsed, or the
18 judgment of conviction has been affirmed on appeal or when an order granting
19 probation is made suspending the imposition of sentence, irrespective of a
20 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing
21 such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
22 setting aside the verdict of guilty, or dismissing the accusation, information or
23 indictment.

24 REGULATORY PROVISIONS

25 13. California Code of Regulations; title 16, section 1444, states:

26 A conviction or act shall be considered to be substantially related to the
27 qualifications, functions or duties of a registered nurse if to a substantial degree it
28 evidences the present or potential unfitness of a registered nurse to practice in a
manner consistent with the public health, safety, or welfare. Such convictions or
acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those
violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to
Section 290 of the Penal Code.

14. California Code of Regulations, title 16, section 1445(b), states:

When considering the suspension or revocation of a license on the grounds
that a registered nurse has been convicted of a crime, the board, in evaluating the
rehabilitation of such person and his/her eligibility for a license will consider the
following criteria:

///

1 (1) Nature and severity of the act(s) or offense(s).

2 (2) Total criminal record.

3 (3) The time that has elapsed since commission of the act(s) or offense(s).

4 (4) Whether the licensee has complied with any terms of parole, probation,
5 restitution or any other sanctions lawfully imposed against the licensee.

6 (5) If applicable, evidence of expungement proceedings pursuant to Section
7 1203.4 of the Penal Code.

8 (6) Evidence, if any, of rehabilitation submitted by the licensee.

9 **COST RECOVERY**

10 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
11 administrative law judge to direct a licensee found to have committed a violation or violations of
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
13 enforcement of the case.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(May 8, 2008 Criminal Conviction for DUI on January 9, 2007)**

16 16. Respondent is subject to disciplinary action under Code sections 490 and 2761(f) of
17 the Code in that Respondent was convicted of a crime substantially related to the qualifications,
18 functions, and duties of a registered nurse. The circumstances are as follows:

19 a. On or about May 8, 2008, in a criminal proceeding entitled *People of the State of*
20 *California v. Kathleen Kim Banesle, aka Kathleen Kim Banesleclair*, in the San Diego County
21 Superior Court, Central Division, in Case No. M-011075, Respondent was convicted on her
22 guilty plea of violating Vehicle Code section 23152(a) (driving under the influence of alcohol), a
23 misdemeanor. As a result of a plea bargain, a count for violating Vehicle Code section 23152(b)
(driving with a blood alcohol content of 0.08% or more), a misdemeanor, was dismissed.

24 b. As a result of the above conviction, the Court placed Respondent on five (5) years
25 summary probation and ordered her to violate no laws, pay various fines and fees; serve 10 days
26 in the Public Service Program, with two days credit for time served, for a total of 8 days; and
27 perform 64 hours of volunteer work in lieu of fees and fines. The Court also ordered that
28

1 Respondent enroll in and complete a 9-month First Conviction Program, a MADD Impact Panel,
2 and not drive without a valid driver's license and liability insurance.

3 c. The circumstances that led to Respondent's conviction are that on January 9, 2007, at
4 approximately 11:30 p.m., California Highway Patrol Officers, while traveling southbound on I-5
5 south of Washington Street in San Diego, California, noticed a white BMW ahead of their patrol
6 vehicle traveling at approximately 80mph in the #4 lane, drift into the #3 lane, then drift back to
7 the #4 lane several times. As the vehicle approached the Front Street on-ramp, it suddenly
8 swerved right to exit. Officers followed the vehicle and performed a traffic stop. When officers
9 contacted the driver (Respondent) through the open driver's window, Respondent started to laugh
10 and told the officers that she and her passenger were "just being girls." Respondent told officers
11 that she was a nurse at Sharp Hospital in Coronado and was just trying to get home. When the
12 officers questioned her route home, Respondent admitted she was headed to The Bitter End Bar
13 with her friend first. Officers detected the odor of an alcoholic beverage on her breath and
14 noticed her eyes were red and watery and her speech extremely slurred. Officers asked
15 Respondent if she had anything to drink and Respondent told officers she had one beer.
16 Respondent reminded the officers that she was a nurse and told them she was okay to drive.
17 Officers asked Respondent for her driver's license and she began to hand them a picture of her
18 and her passenger from Benihanas restaurant. Respondent was unable to locate her driver's
19 license and handed officers her passport which identified her as Banesleclair. When officers
20 asked Respondent to get out of her vehicle, she had significant difficulty maintaining her balance
21 as she walked. When officers had Respondent perform field sobriety tests, she told officers
22 numerous times that she was a nurse and was okay to drive. Respondent failed the field sobriety
23 tests and was placed under arrest for driving under the influence of alcohol. When Respondent
24 was placed under arrest, she immediately became angry, telling officers that she did not believe
25 they were "doing this to her," and that "we're supposed to be on the same team." Respondent
26 became more upset as the officers and Respondent waited for a tow truck to tow her car and told
27 officers that they obviously got a thrill from arresting her and that "Karma" was going to get
28 them. Respondent told one of the officers that he'd better hope neither he nor his family end up

1 in Coronado Hospital under her care and then became more disruptive. Respondent was
2 transported to the San Diego Area CHP office where she continued to be disruptive. Once at the
3 CHP office, Respondent began yelling loudly for someone to help her, claiming her handcuffs
4 were too tight and wanting to speak to an attorney. A sergeant checked Respondent's handcuffs
5 and confirmed they were not on too tight. Respondent continued to demand to speak to an
6 attorney and was informed that she could speak to an attorney once she submitted to the chemical
7 test, which she refused. Officers read Respondent the Chemical Test Refusal Admonition and she
8 still refused to submit to any test. Officers then informed her they would perform a blood test
9 with or without her consent and told her that if she continued to resist, they would physically
10 restrain her in order to conduct the chemical test. A sample of Respondent's blood was drawn at
11 approximately 12:05 a.m. and Respondent was transported to the Las Colinas Women's
12 Detention Facility. Respondent's blood alcohol content (BAC) was measured at 0.21% BAC.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct-Use of Alcohol in a Manner Dangerous 15 or Injurious to Self or Others)**

16 17. Respondent is subject to disciplinary action for unprofessional conduct under Code
17 section 2762, subdivision (b), in that on January 9, 2007, she used alcohol to an extent or in a
18 manner that was dangerous to herself and the public when she drove a motor vehicle while having
19 a significantly high BAC, as set forth in paragraph 16, above, which is incorporated here by
20 reference.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct – Conviction of an Alcohol-Related Crime)**

23 18. Respondent is subject to disciplinary action for unprofessional conduct under Code
24 section 2762, subdivision (c), in that she was convicted of a criminal offense involving the
25 consumption of alcohol, as set forth in paragraph 16, above, which is incorporated here by
26 reference.

27 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – False Statement on Renewal Application)**

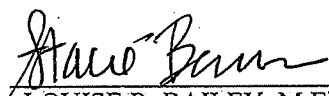
3 19. Respondent is subject to disciplinary action under Code section 2761, subdivision (e),
4 in that she made a false statement of fact required to be revealed in her renewal application to the
5 Board. The circumstances are that on or about July 11, 2009, Respondent submitted an on-line
6 renewal application to the Board of Registered Nursing for the renewal period August 1, 2009 to
7 July 31, 2011. One question in the application was, "SINCE YOU LAST RENEWED YOUR
8 LICENSE, HAVE YOU HAD ANY LICENSE DISCIPLINED BY A GOVERNMENT
9 AGENCY OR OTHER DISCIPLINARY BODY; OR, HAVE YOU BEEN CONVICTED OF
10 ANY CRIME IN ANY STATE, THE USA AND ITS TERRITORIES, MILITARY COURT OR
11 A FOREIGN COUNTRY? Respondent replied "NO" and failed to disclose the conviction that is
12 detailed in paragraph 16, above, which is incorporated here by reference.

13 **PRAYER**

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
15 and that following the hearing, the Board of Registered Nursing issue a decision:

- 16 1. Revoking or suspending Registered Nurse License Number 535791 issued to
17 Kathleen Kim Banes-Leclair;
- 18 2. Ordering Kathleen Kim Banes-Leclair, to pay the Board of Registered Nursing the
19 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
20 Professions Code section 125.3;
- 21 3. Taking such other and further action as deemed necessary and proper.

22 DATED: OCTOBER 02, 2012

23 
24 *for* LOUISE R. BAILEY, M.ED., RN
25 Executive Officer
26 Board of Registered Nursing
27 Department of Consumer Affairs
28 State of California
Complainant

SD2012703537
70611707.docx